

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TESSERA, INC.,

Plaintiff,

v.

ADVANCED MICRO DEVICES, INC.,
et al.,

Defendants.

No. C 05-4063 CW

ORDER DENYING THE ST
DEFENDANTS' MOTION FOR A
PRELIMINARY INJUNCTION

AND RELATED COUNTERCLAIMS.

Defendants STMicroelectronics, Inc. (ST-Inc.) and
STMicroelectronics, N.V. (ST-NV) (collectively, the ST Defendants)
move for a second time for a preliminary injunction prohibiting
Plaintiff Tessera, Inc. from further participating in the
International Trade Commission (ITC) proceedings currently underway
against ST-NV. Tessera opposes the ST Defendants' motion. The
matter was taken under submission on the papers.

In an order dated January 28, 2008 (Docket No. 686), the Court
denied the ST Defendants' first motion for a preliminary

1 injunction, which sought the same relief the present motion seeks.
2 That order addressed all of the arguments the ST Defendants now
3 make, and there are no new facts to warrant the ST Defendants'
4 filing a second motion on the same matter. The ST Defendants point
5 to only one recent development: the report of Tessera's expert,
6 which was served after the ST Defendants had filed their reply
7 brief in support of their first motion. However, the ST Defendants
8 brought the report to the Court's attention during oral argument on
9 that motion. At the hearing, the Court rejected the same arguments
10 the ST Defendants advance now.

11 To reiterate, it is irrelevant that the expert report contains
12 an infringement analysis of products that in some instances are
13 sold by ST-Inc. and thus may be subject to a license defense. In
14 other instances, those same products are sold by ST-NV without
15 first being purchased from ST-Inc. The ST Defendants do not argue
16 that these sales are subject to a license defense. Thus, the
17 question is not whether a particular product infringes Tessera's
18 patents, it is whether a particular sale of that product
19 constitutes infringement.

20 The expert report does not contradict Tessera's representation
21 that it is not pursuing claims in the ITC against sales which the
22 ST Defendants claim are licensed. Nor have the ST Defendants shown
23 that Tessera seeks an exclusion order in the ITC that would apply
24 to licensed products. To the contrary, Tessera's submissions in
25 the ITC reveal that it is seeking an exclusion order that would
26 apply only to unlicensed products. See Bishop Dec. Ex. 1 at 370,
27 373, 378-79, 386.

1 For these reasons, the ST Defendants' motion (Docket No. 725)
2 is DENIED.

3 IT IS SO ORDERED.

4
5 2/21/08

6 Dated: _____



CLAUDIA WILKEN
United States District Judge

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